

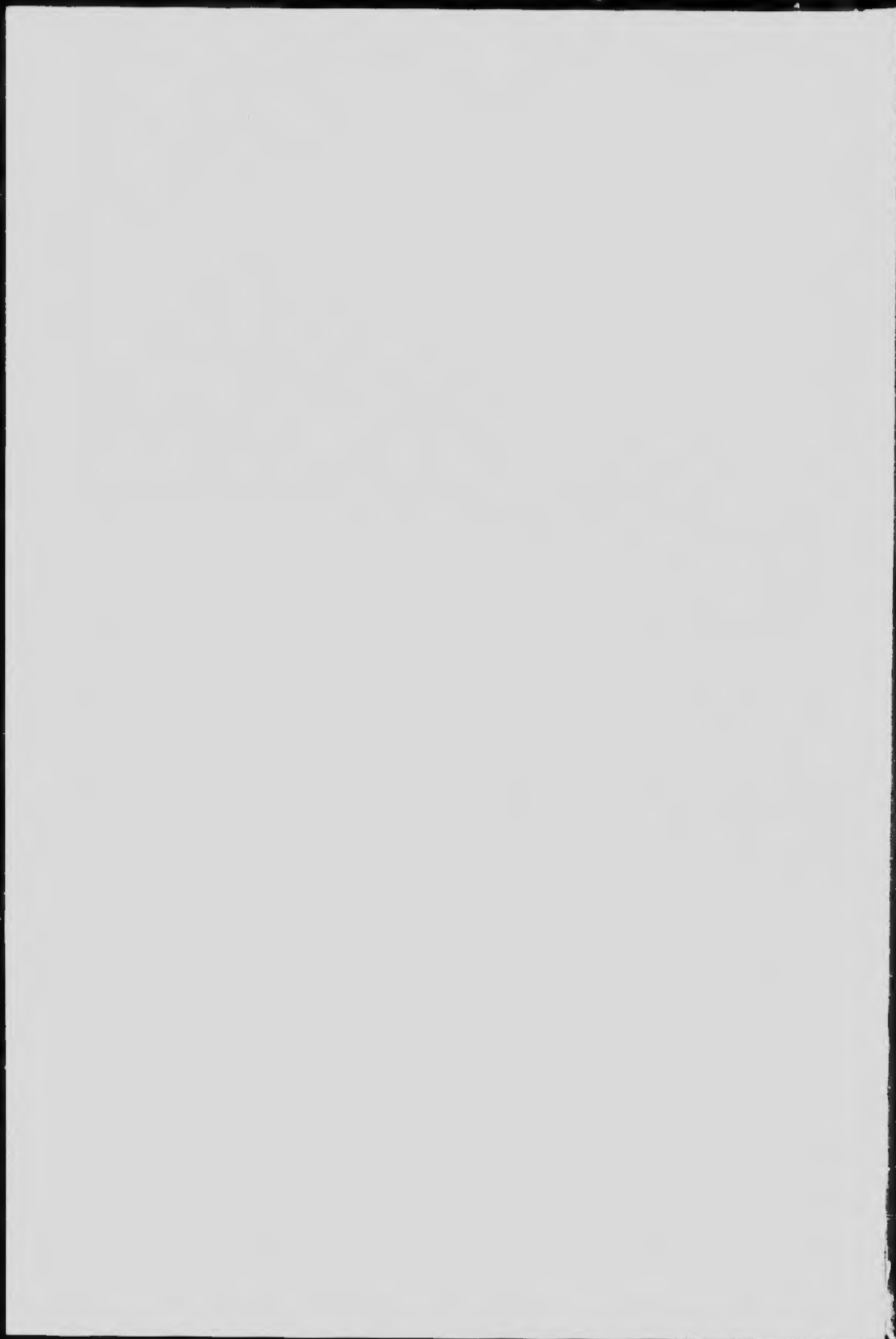
**CIHM  
Microfiche  
Series  
(Monographs)**

**ICMH  
Collection de  
microfiches  
(monographies)**



**Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques**

**© 1996**



27-A

late Mrs

Canada Law  
Journal.

The Queen - In  
Memoriam.

Toronto, Canada:  
Canada Law  
Book Company.

February 1, 1901.

\$ .00., pp 8; Postpaid



0 900504

# Canada Law Journal.

~~OF THE CANADIAN BAR ASSOCIATION AND THE CANADIAN JUDICIAL ASSOCIATION~~

## The Queen.

THE QUEEN, in the eyes of the Canadian people, is the symbol of the unity and continuity of the Canadian nation. She is the embodiment of the Canadian spirit, the Canadian ideal, the Canadian dream. She is the mother of the Canadian people, the protector of their rights, the defender of their interests. She is the source of their strength, the fountain of their life.

THE QUEEN, in the eyes of the Canadian people, is the symbol of the unity and continuity of the Canadian nation. She is the embodiment of the Canadian spirit, the Canadian ideal, the Canadian dream. She is the mother of the Canadian people, the protector of their rights, the defender of their interests. She is the source of their strength, the fountain of their life.

QUEEN OF CANADA  
QUEEN OF THE COMMONWEALTH  
QUEEN OF THE BRITISH EMPIRE

At the present time, the Canadian people are united in their loyalty to the Queen. They are united in their admiration for her wisdom and her courage. They are united in their respect for her authority and her power. They are united in their love for her and for the country she represents. They are united in their faith in her and in the future of the Canadian nation.



0 900504

# Canada Law Journal.

---

## The Queen.

On the evening of the twenty-second day of January last, Her Most Gracious Majesty, Queen Victoria, passed from her earthly kingdom into the presence of the King of Kings; and what has been in many respects the most memorable reign in the history of the British Empire, and perhaps of the world has come to an end.

As Queen she has lived under a solemn sense of her responsibility to the Divine axiom that "Righteousness exalteth a nation." As a woman her deep religious convictions were well recorded in her own words on the mausoleum at Frogmore which contains the remains of the Prince Consort, and where he has been laid all that is mortal of his faithful and devoted wife:—

Victoria—Albert.

Here at last I shall rest with thee;  
With thee in Christ shall rise again.

As our mother Queen, revered and loved as such, her memory will remain in the hearts of her people while history lasts. We quote the words of a writer who most aptly expresses the thoughts that must fill all our minds on this subject:—"Mothers in mansions and in hovels, in the stately homes of England, in the cots of Ireland, in the bungalows of India, in the whitewashed cottages of Quebec, cherished the Queen's joys and told at the hearth the tale of her sorrows. Hence devotion to the Queen took on much of reverence and of softness. The hearts of the children became seed plots of patriotism. The home buttressed the throne. All over the empire affection for the woman nestled at the very core of loyalty to the Sovereign."

Her wise and temperate attitude in regard to religious matters may be said in no fanciful sense to have given a new meaning to her official title of Defender of the Faith; and to have furnished not the least striking illustration of the qualities, which, in a purely political sphere, have rendered her a model Queen, and a pattern for all future constitutional monarchs. It is assuredly a notable achievement to have succeeded so admirably in combining an adequate fulfilment of the obligations incident to her position as head of two state churches, with the toleration which is incumbent upon the ruler of an Empire embracing so many hundreds of diversified sects, that not a single jarring note has troubled the symphony of praise which the representatives of every form of belief has been sounding over her bier.

It needs not, however, that we should repeat the praises so universal throughout her vast Empire and which have been echoed across the oceans from the continents to the islands of the sea. The best testimony to her virtues and her wisdom is not so much the voice of the civilized world joining in the same note of praise, but rather what she has helped to accomplish during her long and eventful reign. Of no one of even her rank and station can it be more truly said, *Si monumentum queris, circumspice*. The progress and prosperity of hundreds of millions who called her Queen and of the many lands over which her sway extended is the best tribute to the beneficent influence of her life. So splendid an embodiment was she of the greatness of her age and so powerful her quiet influence for good, that no matter how long the world lasts Victoria will stand in the van of the rulers of men, and the Victorian age will be an abiding stimulus to all nations in their efforts to attain to the highest plane of living compassed by the social state.

Not the least important advancement during the reign that has just closed has been the growth of law and order and the increased security of life and property throughout the empire. Perhaps the greatest blessing and the one most essential to the welfare of any nation is the strong, sleepless and impartial administration of justice. Since the Chartist riots in 1839 there has been no serious popular outbreak, and there now exists amongst her people, to a degree unknown in almost any other nation, that sense of safety and security so necessary to human happiness, and so indicative of a high order of civilization. The criminal and dangerous classes have learned to realize that the arm of the law is stronger



than they, and that it reaches to the ends of the earth. Perhaps the sight so often seen in the crowded thoroughfares of London may in a simple way illustrate this majesty of the law. A quiet man in simple uniform steps slowly forward and lifts his hand, and at once every vehicle, whether it be the Queen's carriage, the Prime Minister's brougham or the costermonger's cart, becomes motionless. A wave of the same hand and the roar of traffic begins again. The man is only a police constable, but behind him is the whole power of the empire.

When death removes one in authority who has always held sovereignty over our love and veneration as well as over our political conduct, it is difficult to discuss the event from the practical standpoint of the lawyer; our minds are too much filled with the thought of our loss in that one so gracious, so good and so great has been taken from us—But turning to matters more specially within our province:

Of the many functions which pertain to the sovereignty of Great Britain, there are none more honorable, none more important than those which are concerned with the administration of justice. The Sovereign is the fountain of justice, as well as the fountain of honor, and to the Sovereign alone belongs the prerogative of mercy. In early and primitive times the "king sat in the gate," hearing the complaints of his subjects, redressing their wrongs, settling their disputes and awarding punishment to malefactors. So sat David and his illustrious successor, and such is the practice to-day in Eastern countries, and from this practice grew by slow degrees the courts by which in our day justice is administered. In the name of the Sovereign all writs run, and were such a thing as an interregnum to arise all legal proceedings would come to a standstill. More directly than any other officials our judges represent the Sovereign. The Lord Chancellor is "the keeper of the King's conscience," and it is as directly representing the Sovereign that his great functions are performed. In feudal times the "King's Justiciar" was one of the great officers of State, and the courts as originally established, or, as by degrees they were extended and enlarged, were the King's courts. As the King could appoint the judges, so he could remove them, until this power was so frequently abused in later times that the Sovereign was compelled to limit his prerogative and forego the power of removal.

Lawyers are officers of the courts; and though the changes in our constitution have made the supremacy of our Sovereign a matter of form rather than reality, we naturally feel a special interest in the person of the Sovereign. During the reign just ended there is no doubt that the opinion of the Queen had a decided influence in the appointment of the judges. No doubt a negative, rather than a positive influence, for it cannot be supposed that she would have permitted the appointment to the Bench of any man whose character was open to suspicion in any particular. And it is one of the glories of Queen Victoria's reign that the judges of her courts have been of the highest reputation for probity as well as ability.

The accession of Her Majesty found our juridical system freed from many abuses which had grown up around it, and the criminal law deprived of many of the terrors which previously weakened its powers by inflicting penalties so severe that juries failed to convict. In later years still further changes have taken place. The distinction in procedure between law and equity has been done away with, and the abstruse science of pleading has given way to a simpler and more reasonable method of arriving at the issues. The jurisdiction of the lower courts has been enlarged so as to bring the means of obtaining justice within easy reach of all. Economy and simplicity has been aimed at, and largely attained, and the process has been continually going on. We may claim, therefore, that from the legal standpoint the reign of Queen Victoria has been one of progress, and of progress always tending to the benefit, not of any privileged few, but of the great mass of her subjects. Justice has been more than ever tempered with mercy. Reform rather than punishment has been the object of all the changes in our criminal law, and the prevention of crime by removing the source of temptation rather than the infliction of penalties when it has been committed.

Space will not permit us to even attempt to deal with many other important matters. We might enlarge upon the growth of the constitutional law, and dilate upon the progress that has been made in regard to the liberty of the subject. We might refer to the Imperial Parliament rolls, which reveal such progressive measures as those for the repeal of the last vestiges of intolerance against Roman Catholics; the admission of Jews to Parliament; the abolition of University tests; the Reform Act, of 1867; the disestablishment of the Irish Church; The British North America Act, 1867; and the Australian Commonwealth Act, of 1900; the two

last enactments meaning more for the maintenance and continuity of the Empire than anything that the British parliament has done since the passage of the Act of Settlement in 1700-01.

In our grief at the loss of our Queen, we have consolation in the remembrance of all that we have gained during her long reign, as well as the just expectation that in her successor we may hope to see continued the progress which has produced so much benefit to all classes of the community, and to none more than to the profession in whose interests we are specially concerned.

We would now turn for a moment to point out in the briefest possible way the more important constitutional effects in Canada of the Crown's demise.

Firstly: The demise of the Crown does not dissolve the parliament of Canada, nor the Legislature of Ontario. (See 31 Vict., c. 22, s. 1; R.S.C. c. 11, s. 1; R.S.O. (1897) c. 12, s. 2.) The same is true of the legislatures of Quebec (R.S.Q. Tit. II, s. 78); Nova Scotia (R.S.N.S. 5th ser., c. 3, s. 9); New Brunswick (Con. St. N.B. c. 5, s. 80); P. E. Island (4 Will. IV., c. 12, s. 1); British Columbia (R.S.B.C. c. 118, s. 2); Manitoba (R.S.M. c. 36, s. 9); North-West Territories (R.S.C. c. 50, s. 11).

Secondly: The Governor-General is continued in office for eighteen months after the demise of the Crown, by virtue of the Imperial Act, 1 Will. IV., c. 12, s. 2.

Thirdly: The Lieutenant-Governors of the several provinces, being appointed (see B.N.A. Act, 1867, s. 58) by the Governor-General-in-Council, are retained in office by the proclamation of the Governor-General, which was made under the provisions of R.S.C. c. 19, s. 3.

Fourthly: Privy Councillors, and all officers, civil and military, are continued in office for six months after the demise of the Crown by 6 Anne, c. 7, s. 8 (1701). The statute is expressly applied to the colonies. There has also been legislation upon this subject by the Parliament of Canada, and most of the provincial legislatures, continuing public officers and functionaries in their commissions, without limitation, upon proclamation in that behalf by the Governor-General in the case of Dominion officials, and by the Lieutenant-Governors with respect to provincial officials.

In such of the Provinces as there is no legislation of the kind, it would seem necessary for the legislatures to pass enactments confirming the officials in their offices under the new Sovereign.

See in this connection : R.S.C. c. 19, s. 3; P.S.O. (1897) c. 16, s. 1; R.S.Q. c. 3, Arts. 601, 602; Acts of P. E. Island, 43 Vict., c. 9, s. 1; R.S.B.C. c. 118, s. 2.

Fifthly: The Imperial Act, 1 Geo. III., c. 23, s. 1, which continues the commissions of the judges during their good behaviour, and notwithstanding the demise of the Crown, became part of the law of Upper Canada by reason of the aforesaid legislation of 1792, which introduced therein the English laws as they existed on the 15th October, 1792, as regards property and civil rights, in so far as they were not inapplicable to the state and condition of the Province. The enactment found in Con. Stat. U.C., c. 10, s. 11, is simply declaratory of the old law in this behalf, and raises no repeal by implication of the Imperial legislation. It was in no sense contrary to the latter, but, within the meaning of the authorities, had simply a "concurrent efficacy." See Maxwell on Stats., pp. 216, 227; Steph. Com., 13th ed., vol. I., pp. 40, 47; *Foster's case*, 11 Rep. 63; *Conservators of the Thames v. Ball*, S.R., 1 C.P. 415; *Fitzgerald v. Champneys*, 2 J. & H. 31. The B.N.A. Act, 1867, s. 99, in enacting that the judges of the Superior Courts shall hold office during good behaviour, does not repeal the then existing law of Ontario to the effect that the judge's commissions shall not be affected by the Crown's demise. It simply leaves untouched the old provision as to the effect of the Crown's demise. This proposition is based upon two grounds: first, because it is a canon of statutory construction that the legislature does not intend to make any alteration in the existing law beyond what it explicitly declares, or fairly implies (Maxwell, p. 113); and secondly, because s. 129 of the B.N.A. Act, 1867, expressly declares that except as otherwise provided therein all laws in force in the Province of Canada, and the other Provinces, at the union, should continue in force. And, furthermore, this very section expressly prohibits any repeal by the Parliament of Canada, or by the Legislatures of the Provinces, of any laws existing at the union by virtue of Imperial statutes. So, whether or not it was within the competence of the Ontario Legislature in 1877 to repeal s. 11 of c. 10, Con. Stat. U.C. (and we think it was not), that enactment being merely auxiliary to and declaratory of the Imperial statute of 1 Geo. III. c. 23, s. 1, the latter is maintained in full force and effect by the section of the B.N.A. Act last above quoted, so far as the Province of Ontario is concerned.

The Imperial statute last referred to was re-enacted in the

other provinces of Canada, before Confederation, but these provincial enactments are now repealed by the Revised Statutes of Canada. It is doubtful, to say the least, whether this Imperial statute obtained in Quebec, Nova Scotia, New Brunswick or Prince Edward Island before Confederation; and so, *ex abundanti cautela*, it would be well for the Parliament of Canada to legislate upon the subject, and silence doubts as to the effect of the Crown's demise on the judicial tenure of office, for all time.

The following graceful tribute to the memory of our Queen comes to us from a leading lawyer in New York. It is very pleasing and grateful to us all at this time. It is one of the many exhibitions of the love and reverence in which she was held by our Anglo-Saxon kinsmen of the great Republic whose forebears came from the same stock as ourselves:—"Will you accept my sincere sympathy with you all and all Britons in your sorrow at the death of the Queen. I realize that probably none but her subjects can quite understand what it means to lose both a Sovereign and an ideal; but I should like to bear witness that just because she was an ideal her sway extended far beyond the limits within which she was Sovereign, and the whole world mourns with the British Empire. You would be deeply impressed could you see here in New York the general evidences of sincere sorrow and the general display of half-masted flags on Government and private buildings. Personally I have felt the greatest solicitude during her critical illness and sorrow at her death, and I want you to be assured of my sympathy and of that of my countrymen universally, because I feel that it cannot but be acceptable to our kinsmen."

It is interesting at this time to note that the first "counsel learned in the law" of a British sovereign was a Queen's Counsel—Bacon having received this honour from Queen Elizabeth. It is also a matter of history that the silk robes worn by King's counsel or Queen's counsel owed their origin to the mourning costume adopted on the death of Queen Anne, as to which it has been said that "The bar went into mourning and have never since left that mourning off." That which was only a witty saying so far as Queen Anne was concerned will be the heart truth as to the great and beloved Queen whose irreparable loss the Bar of Canada mourns with the rest of the loyal subjects of the Crown.

HIS EXCELLENCY THE GOVERNOR GENERAL has received with deepest regret the news of the death of Her Majesty Queen Victoria, communicated to His Excellency in the following cable from the Right Honourable the Secretary of State for the Colonies:—

LONDON, January 22, 1901.

"Deeply regret to inform you that the Queen passed away at six thirty this evening."

CHAMBERLAIN.

#### CANADA.

By His Excellency the Right Honourable Sir GILBERT JOHN ELLIOT, Earl of Minto and Viscount Melgund of Melgund, County of Forfar in the Peerage of the United Kingdom, Baron Minto of Minto, County of Roxburgh in the Peerage of Great Britain, Baronet of Nova Scotia, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, etc., etc., Governor General of Canada.

To all to whom these presents shall come,—GREETING:

**W**HEREAS it has pleased Almighty God to call to His Mercy Our late Sovereign Lady Queen Victoria of blessed and glorious memory by whose decease the Imperial Crown of the United Kingdom of Great Britain and Ireland and all other Her late Majesty's Dominions is solely and rightfully come to the High and Mighty Prince Albert Edward Prince of Wales: I, the Sir Gilbert John Elliot, Earl of Minto, Governor General of Canada as aforesaid assisted by His Majesty's Privy Council for Canada, and with their hearty and zealous concurrence, do therefore hereby publish and proclaim that the High and Mighty Prince Albert Edward Prince of Wales is now by the death of Our late Sovereign of happy and glorious memory become our only lawful and rightful Liege Lord Edward the Seventh by the Grace of God, King of the United Kingdom of Great Britain and Ireland, Defender of the Faith, to whom are due all faith and constant obedience with all hearty and humble affection. And I do hereby require and command all persons whomsoever to yield obedience and govern themselves accordingly—beseeching God by whom Kings and Queens do reign to bless the Royal Prince Edward the Seventh with long and happy years to reign over us.

Given under my Hand and Seal at Arms, at Ottawa, this twenty-third day of January, in the year of Our Lord one thousand nine hundred and one, and in the first year of His Majesty's reign.

By Command,

R. W. SCOTT,

Secretary of State.

GOD SAVE THE KING.